

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PRESTON A. SMITH,

Plaintiff,

v.

ORDER
10-CV-824A

JAMES CONWAY, Superintendent,
PAUL CHIAPPUS, JR. Dept. Sup of Security,
JAMES WHITFORD, S. DOLCE,
KENNETH S. PERLMAN and R. KILLINGER,

Defendants.

The above-referenced case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1)(B). On August 7, 2013, Magistrate Judge Foschio filed a Report and Recommendation, recommending that defendants' motion be *sua sponte* converted to a motion for summary judgment and granted and that plaintiff's motion for summary judgment be denied.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed¹, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, defendants'

¹ The Court is in receipt of a "statement" by plaintiff filed on August 9, 2013. Therein, plaintiff makes statements which appear to be unrelated to his complaint and instead involve missing property and/or documents. It is unclear what relief, if any, plaintiff is seeking. Irregardless, this Court finds that summary judgment has been properly granted.

motion is *sua sponte* converted to a summary judgment motion and is granted and plaintiff's motion for summary judgment is denied.

The Clerk of Court shall take all steps necessary to close the case.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: August 30, 2013